

Calaveras Superior Court
Civil Law & Motion Calendar with Tentative Rulings
Friday, March 27, 2020
Hon. David M. Sanders, Courtroom #2

9:00 AM	19CV43909	Demurrer by Def Wuttke to Verified 2nd Amended Complaint	03/04/2019	07/01/2020	Case Management Conference
Ptff/Pet:	Lane, David		Atty:	Demonteverde Hoats, Lilian	
Def/Res:	Richardson, Dan Edward; Wuttke, Michael M		Atty:	Pro Se; Boutin Jones Inc	

Tentative Ruling: On March 4, 2019, plaintiff filed the complaint. On July 23, 2019, defendant Richardson filed an answer. On August 23, 2019, defendant Wuttke demurred and plaintiff filed a first amended complaint. On October 21, 2019, defendant Wuttke filed a demurrer to the first amended complaint and plaintiff filed a second amended complaint. Defendant Wuttke filed this motion on February 14, 2020.

Defendant Wuttke's request for judicial notice for Exhibits 1, 2, and 3, pursuant to Evidence Code sections 452 and 453 is GRANTED.

Plaintiff's request for judicial notice for Documents 1, 2.a, 2.b, 3, 3.a and 3.b pursuant to Evidence Code sections 452 and 453 is GRANTED.

(Plaintiff objects to defendant's memorandum because it does not comply with Rule of Court 3.1113(d) as it exceeds fifteen (15) pages. Plaintiff requests the Court to strike pages 16-20 of the memorandum. In the interests of justice and judicial economy, the Court OVERRULES plaintiff's objection and reaches the merits on the motion.)

As to defendant's demurrer:

Defendant's demurrer to the first and third causes of action are OVERRULED as plaintiff has alleged sufficient facts to support a viable cause of action under California's liberal pleading practice.

Defendant's demurrer to the second cause of action is OVERRULED as it has been specifically pleaded. Equitable estoppel must be specifically pleaded in the complaint with sufficient accuracy to disclose facts relied upon. *Minish v Hanuman Fellowship* (6th Dist.2013) 214 Cal.App.4th 437, 459.

Defendant's demurrer to the fourth cause of action is SUSTAINED Without leave to amend as unjust enrichment an element of damages, is not a cause of action and the defect cannot be cured by amendment.

Defendant's demurrer to the fifth cause of action is OVERRULED. Plaintiff alleges the breach of contract and specific performance is comprised of oral promises and written memorandums. The written contracts have been provided. Whether defendant signed any of the agreements or made any promises is a triable issue of fact and plaintiff's verified contention that defendant made the assertions/promises suffices to establish a colorable claim.

Defendant's demurrer to the sixth cause of action is OVERRULED. Any cause of action that is added must involve the same injury as the original complaint. *Branick v Downer S&L Ass'n* (2006) 39 Cal.4th 235, 244. An amended complaint involves the same injury when it seeks recovery for violation of the same primary right alleged in the original complaint. *Rowland v Superior Ct* (4th Dist. 1985) 171 Cal.App.3d 1214, 1217. Violation of Business and Professions Code §17200 alleges the same injury as the other causes of action.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.